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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

**STUART S. PRESSLY,**

Petitioner,

**v.**

**F.B. HAWS, Warden,**

Respondent.

07cv2315 J (JMA)

**RESPONDENT'S OPPOSITION TO  
PETITIONER'S MOTION TO  
STAY THE PROCEEDINGS**

The Honorable Jan M. Adler

Respondent submits this opposition to Petitioner Stuart Pressly's ("Petitioner") "Stay and Abeyance For Leave to Amend," or Motion to Stay the Proceedings Pending Exhaustion of State Court Remedies. As explained below, this Court should deny the motion because Petitioner has failed to make the showing required by *Rhines v. Weber*, 544 U.S. 269, 125 S. Ct. 1528, 161 L. Ed. 2d 440 (2005).

**ARGUMENT**

The Antiterrorism and Effective Death Penalty Act of 1996 (28 U.S.C. § 2254) ("AEDPA") governs this case because the Petition was filed after April 24, 1996. *See* 28 U.S.C.

§ 2254; *Lindh v. Murphy*, 521 U.S. 320, 327, 117 S. Ct. 2059, 138 L. Ed. 2d 481 (1997); *Campbell v. Rice*, 408 F.3d 1166, 1169 (9th Cir. 2005) (en banc). An important purpose of the AEDPA is to reduce delay in execution of sentence and promote finality of judgment. *See Rhines*, 544 U.S. at 276. Thus, petitioners are required to bring their claims to federal court within a year after the State court judgment becomes final. 28 U.S.C. § 2244(d); *Ferguson v. Palmateer*, 321 F.3d 820 (9th Cir. 2003). Of course, the petitioner is limited in federal court to those claims he properly exhausted in State court within the limitations period. 28 U.S.C. § 2254(b); *Jackson v. Roe*, 425 F.3d 654, 657-58 (9th Cir. 2005).

To circumvent this rule, habeas petitioners who fail to timely present claims to the State court often will move the federal court to stay the proceedings and hold a pending petition in abeyance while they return to State court to raise – usually in the first instance by means of an extraordinary writ, which the State’s courts will not entertain absent extraordinary circumstances – the unexhausted claims. *See, e.g.*, Exhibit A to Petitioner’s Motion to Stay (Feb. 15, 2008, Super. Ct. Order Denying Pet. for Writ of Habeas Corpus) at 2 (“matters that could have been but were not raised on appeal are not cognizable on habeas corpus in the absence of special circumstances”). While the district court has discretion to grant such a “stay-and-abey” motion, that discretion applies “only in limited circumstances.” *Rhines*, 544 U.S. at 277, 125 S. Ct. at 1535. As the United States Supreme Court has explained, “[s]tay and abeyance, if employed too frequently, has the potential to undermine [the AEDPA]”; accordingly, staying pending habeas proceedings is appropriate “only . . . when the district court determines there was good cause for the petitioner’s failure to exhaust his claims first in state court.” *Id.* at 277-78 (emphasis added). Moreover, the petitioner must show that the unexhausted claims are “potentially meritorious.” *Rhines*, 544 U.S. at 276-77, 125 S. Ct. at 1535.

Here, Petitioner has done neither. Indeed, even if one were to assume the new and additional claims were potentially meritorious, Petitioner does not bother to explain his delay at all, let alone provide good cause for it. He simply avers that he filed a writ petition in superior court in December of last year and requests this Court stay the current proceedings. Such a conclusory demand does not meet the standard announced in *Rhines*.

1           On the other hand, it is not surprising Petitioner offers no reason for his failure to  
2 diligently pursue his claims in State court because he likely would be hard-pressed to find one.  
3 *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080, 1087-1088 (9th Cir. 2002) (good cause  
4 requires showing of diligence); *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294-1295 (9th Cir.  
5 2000) (same); *United States v. Te Selle*, 34 F.3d 909, 910-911 (9th Cir. 1994); *Johnson v. Mammoth*  
6 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992); *Fimbres v. United States*, 833 F.2d 138, 139  
7 (9th Cir. 1987); *Townsel v. Contra Costa County*, 820 F.2d 319, 320-321 (9th Cir. 1987); *Wei v.*  
8 *State of Hawaii*, 763 F.2d 370, 372 (9th Cir. 1985). All six of the new claims, which challenge the  
9 sufficiency of the evidence, the admission of evidence, and the effectiveness of counsel, are based  
10 on facts apparent at the time of trial, or at the very latest by the time of appeal, and therefore  
11 redressable by direct appeal or contemporaneous post-conviction writ petition. Petitioner did not  
12 present these claims in those proceedings, but instead waited until December 17, 2007 – after he  
13 already had filed the Petition in this Court – to present the claims by means of an extraordinary writ  
14 petition to the State’s lowest court. Even then, he did not request a stay from this Court until May  
15 19, 2008, by which time Respondent already had filed its Answer. This cannot constitute diligence.

16           Petitioner has not established good cause for his failure to diligently pursue in State court  
17 the claims he seeks to add to his Petition at the eleventh hour. Accordingly, this Court should deny  
18 the motion to stay the proceedings.

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**CONCLUSION**

For the foregoing reasons, Respondent respectfully requests the Court deny Petitioner's motion to stay the proceedings.

Dated: July 16, 2008

Respectfully submitted,

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**CERTIFICATE OF SERVICE BY U.S. MAIL**

Case Name: **PRESSLY v. HAWS**

No.: **07cv2315 J (JMA)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 16, 2008, I served the following documents:

**RESPONDENT'S OPPOSITION TO PETITIONER'S  
MOTION TO STAY THE PROCEEDINGS**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

**Electronic Mail Notice List**

I have caused the above-mentioned document(s) to be electronically served on the following person(s), who are currently on the list to receive e-mail notices for this case:

**NONE**

**Manual Notice List**

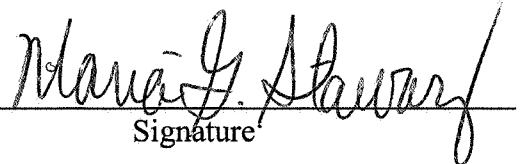
The following are those who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing):

Stuart Scott Pressly  
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P.O. Box 8457  
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In Pro Pro

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 16, 2008, at San Diego, California.

Maria G. Stawarz

Declarant

  
Signature